IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2010 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN K NATHALAL - Petitioner(s)
Versus
PARSHOTTAMDAS MANSUKHLAL PANCHLAL & 4 - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/01/2007

ORAL JUDGMENT

1. Mr.A.R. Majmudar, learned counsel for the petitioner. None for the respondents, though served.

2. As none appeared for the respondents, and the orders passed by the State Government are under challenge, I requested Mr.L.R. Pujari, learned Assistant Government Pleader to help and assist me. He accordingly rendered his assistance.

3. Short facts necessary for disposal of the present writ application are that the land bearing Survey No.97/2, admeasuring 1 Acre and 25 Gunthas of Village Zalod belonged jointly to one Parshottamdas Mansukhlal and Motiram Mansukhlal. Out of the said land, an area of 25 Gunthas was given to the petitioner under a mortgage with possession by Motiram somewhere in the year 1971. Thereafter, a registered sale deed for the said land was executed by the mortgagor in favour of the petitioner on 12/5/1980. The remaining land admeasuring 1 Acre also came in possession of the petitioner as a mortgagee. An entry was made by the Mamlatdar in the year 1988-89. Being aggrieved by the said entries, the respondent preferred RTS Appeal No.79/89-6/90 before the Deputy Collector, Dahod, who, vide his final order dtd.26/4/1990 set aside the order passed by the Mamlatdar and remanded the matter back to the Mamlatdar with a direction to issue notices to the parties. He also observed

that as the provisions of Prevention of Fragmentation and Consolidation of Holdings Act (“the Fragmentation Act” for short), were involved in the matter, the Mamlatdar should send a proposal to initiate proceedings. He also ordered that as the matter is pending before the Civil Court, final judgment be awaited and the effect of the interim injunction granted by the Civil Court be also taken into consideration.

4. The said order was challenged by the petitioner before the Collector who was pleased to dismiss the appeal on 29/6/1991. The order passed by the Collector was challenged in Revision Application bearing No.SRD/HKP/PCM/15 of 1991, the Secretary (Appeals) was pleased to dismiss the revision application, but also directed that the Mutation Entry Nos.6285 and 6292 were contrary to Fragmentation Act, therefore, the Deputy Collector should proceed under the provisions of Fragmentation Act, the petitioner is now before this Court.

5. Mr.Majmudar, learned counsel for the petitioner submits that in a revision filed by the petitioner, an order directing the Deputy Collector to proceed under the provisions of Fragmentation Act could not be made unless

a specific notice was issued by the revisional authority that the revisional authority wanted to impose some more condition in the matter. It is also submitted by him that if the Deputy Collector was of the opinion that the matter needed a remand, then the matter should have been remanded to the Mamlatdar and no condition should have been attached to the order because, the Mamlatdar, after hearing the parties, if came to the conclusion that there was breach of the Fragmentation Act, then, he himself could have made a proposal. According to him,the moment Deputy Collector held that there was breach of the Fragmentation Act, the order of remand virtually stood nullified.

6. After hearing the learned counsel for the petitioner and Mr.L.R. Pujari, learned Assistant Government Pleader, I am of the opinion that the submissions made by Mr.Majmudar must be upheld. In the present case, when the Deputy Collector held that the Entry Nos.6285 and 6292 were made without issuing notice to the affected parties, and the matter deserved remand, then he was not entitled to hold and observe that the Mamlatdar should make a proposal for registering proceedings under the Fragmentation Act. It is to be seen that if the order

passed by the Deputy Collector is allowed to stand in toto, then, virtually no effective hearing can be given by the Mamlatdar to the petitioner. The Mamlatdar, feeling bound by the order and observations made by the Deputy Collector, would not be able to do anything but will have to reject the submissions of the petitioner and would be obliged to make recommendations to the Deputy Collector for proceeding under the Fragmentation Act.

7. The revisional authority, in the opinion of this Court, went wrong in modifying the order passed by the Deputy Collector and Collector and also went wrong in directing that the Deputy Collector should proceed under the provisions of the Fragmentation Act. Undisputedly, the Collector in his turn, had asked the Mamlatdar to make a proposal and if that was so, the revisional authority could not attach any further condition to the order of the Deputy Collector nor could direct the Deputy Collector to proceed under the Fragmentation Act when the Deputy Collector, in his discretion, did not propose to proceed under the Fragmentation Act.

8. Taking into consideration the totality of the circumstances, I am of the opinion that the order passed by the Deputy Collector setting aside the entries and

remanding the matter to the Mamlatdar is concerned, deserves to be confirmed. It is accordingly confirmed. However, the directions issued to the Mamlatdar to make proposal to proceed under the Fragmentation Act, are quashed. The order passed by the revisional authority directing the Deputy Collector to proceed under the Fragmentation Act, are also hereby quashed.

9. The Mamlatdar, in accordance with the directions issued by the Deputy Collector, shall now proceed to hear the parties, after issuing the appropriate notices to the respondents, who are ex-parte before this Court.

10. The petitioner shall appear before the Mamlatdar on 19/2/2007 with a copy of this order. Let a copy of this order be also sent through the registry of this Court to the Mamlatdar, Zalod appraising him as to what he is required to do. If the petitioner appears before the said Mamlatdar, then the Mamlatdar shall proceed to hear the petitioner, but, in case, the petitioner does not appear before the Mamlatdar, then, the said Mamlatdar would be entitled to proceed ex-parte against the petitioner. However, the Mamlatdar would be obliged to issue notice to the respondents, because, for their absence before this Court, no direction can be issued to them to appear

before the Mamlatdar.

11. The petition, to the extent indicated above, is allowed. No costs.

(R.S. GARG, J.)

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